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FILED
Clark
District Court

AUG 16 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

6 Attorney for Plaintiff
7 John (Jack) Angello

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE
NORTHERN MARIANA ISLANDS

10 JOHN (JACK) ANGELLO,

11 CIVIL ACTION NO. 03-0014

12 Plaintiff,

13 v.
14 NORTHERN MARIANAS COLLEGE,

15 Defendant.
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**PLAINTIFF'S'S OPPOSITION TO
DEFENDANT'S MOTION FOR
THE LEVYING OF SANCTIONS**

Date: September 6, 2005
Time: 10:00 a.m.
Judge: The Hon. David Wiseman

COMES NOW Plaintiff, John (Jack) Angello, by and through
counsel of record, Danilo T. Aguilar, to oppose Defendant's Motion
for the Levying of Sanctions. Angello bases his opposition on the
following:

INTRODUCTION

As a preamble to this opposition, Plaintiff strenuously
disputes the remarks of the Defense Counsel in his Motion for

1 Levying Sanctions, in which he contends that Plaintiff shows a
2 lack of respect for this Honorable Court and contempt for its
3 orders.

4 1. No Request for CV03-0014 Discovery was Made. Nowhere in
5 Plaintiff's Open Government Act request of August 1, 2005 is there
6 mention of a request for discovery for District Court Case 03-
7 0014. As Defendant's counsel continually points out in his
8 misdirected attempts to taint Plaintiff's reputation, Plaintiff is
9 not attempting to disrespect an order from this Court via backdoor
10 methods, but is actively involved in several legitimate matters of
11 litigation and research involving the Northern Marianas College.
12 Furthermore, there are several upcoming matters in the very near
13 future, which are outside of CV03-0014 in the District Court, that
14 the requested documentation will be used. Moreover, if the NMC
15 documentation that Plaintiff requested in his Open Government Act
16 letter of August 1, 2005 is given to the Plaintiff and it appears
17 in this case at hand, then this Court has the option to order the
18 removal of such documentation, if warranted.

19 2. Counsel for Defense States a Clear Untruth in His
20 "Declaration of Counsel in Support of Sanctions". In Mr. Smith's
21 Declaration , page two, item 5, dated August 3, 2005, he states
22 that: "...Plaintiff Angello sent a request to the Northern Mariana
23 College ("NMC") in an attempt to obtain the exact documents he was
24 denied..." (no emphasis added). In truth, Plaintiff Angello **did not**
25 request the same **exact** documents in his Open Government request of

1 8/1/05. Some documents were the same, but the majority of
2 documents, e.g., "Dean's" documents, additional budget documents
3 for Business and Computer Programs, and additional documents for
4 the School of Education make the request quite different than the
5 documents requested in Plaintiff's Motion to Compel.
6

7 3. Plaintiff's Doctor of Education and Research is a
8 Continuous Process. Plaintiff Angello has opposed NMC's
9 administrative policies (La Fiesta) in the past, and he is
10 currently researching the NMC's attempts to scrapped the NMC
11 Technical Trades Programs, in which Angello was Director from 1996
12 to 2002, and may possibly be Director again after this case.
13 Furthermore, Plaintiff is often contacted by the legislature for
14 input on the state of educational affairs for the CNMI. Angello
15 cannot be denied access to NMC's public documents, and he will
16 abide by CNMI law in the inspection, copying and utilization of
17 them in the future.

18 4. The CNMI Constitution mandates that the CNMI Attorney
19 General has the ultimate responsibility over NMC's legal affairs.

20 This Court should make Mr. Smith, counsel for the Defendant,
21 prove that he is designated as an Assistant Attorney General and
22 ultimately the duly authorized litigator for NMC in this Motion at
23 hand, or in any further attempts to represent an agency of the
24 executive branch and NMC. The CNMI Constitution, Article III, §
25 11, clearly states, in part: "The Attorney General shall be
responsible for providing legal advice to the governor and
executive departments, representing the Commonwealth in all legal

matters, and prosecuting violations of Commonwealth law."

(Emphasis added). It has already been ruled and not challenged in this U.S. District Court that NMC is part of the executive branch and therefore, should be represented by the CNMI Attorney General.

See *Oden v. Northern Marianas College, et al.*, Order Granting Defendants NMC, Board of Regents, and McPhetres's Motion for Summary Judgment and Dismissing Supplemental Common Law Claims Without Prejudice, dated October 29, 1999, signed by Judge Alex R. Munson. As stated in CV03-0014 of this Court's earlier Order Granting in Part and Denying in Part Defendant's Motion to Dismiss Portions of the Second Amended Compliant, filed February 13, 2004, the Court refrained from interfering into CNMI jurisdiction, as stated, "Here the CNMI's Open Government Act expressly gives jurisdiction to the Commonwealth Superior Court for alleged violations of the Open Government Act." Furthermore, in 1 CMC § 9917(a), provides the Commonwealth Attorney General or designated assistant attorney general as those responsible for determining which records may be withheld *for public inspection*.

5. Order Denying Plaintiff's Motion to Compel did not Prohibit Plaintiff from Seeking Documents by Alternate Means. Plaintiff respected the ruling of the Court in denying his Motion to Compel, but the ruling was based on a technicality, and not on the merits. Furthermore, there is no protective order granting NMC exemption from having its public documentation inspected by other means, and Plaintiff believes that this Court did not intend to stop Plaintiff from exercising his rights under Commonwealth

law and the CNMI Open Government Act.

6. F.R.C.P 37 dictates that parties meet and confer before filing of certain motions. As Defendant continually reminds Plaintiff about "meet and confer", Defendant seems to have a lapse in judgment concerning this matter at hand. A letter from Defense Counsel concerning the 8/1/05 Open Government request was delivered to Counsel for the Plaintiff's office at 4:05 p.m. on August 3, 2005, which was after the Motion for Levying Sanctions was already filed in this Court.

CONCLUSION

Based upon the Plaintiff's opposition to this Motion for Levyng Sanctions, Plaintiff respectfully requests that this Court deny the Defendant's motion and issue an order for Mr. Smith to validate his legitimacy as a designated Assistant Attorney General and NMC's duly authorized counsel of record.

Dated this 16th day of August, 2005.

Daniilo T. Aguilar F0198
Attorney for Plaintiff